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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/940,638	08/29/2001	Takahiro Nakayama	500.40580X00	5603

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EXAMINER

HOGANS, DAVID L

ART UNIT

PAPER NUMBER

2813

DATE MAILED: 11/12/2002

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/940,638	NAKAYAMA ET AL.
	Examiner David L. Hogans	Art Unit 2813

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 19 August 2002.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-10 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-10 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 29 August 2001 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

This office action is in response to Amendment A received August 19, 2002.

Status of Claims

Claims 1-10 are pending and are finally rejected.

Claim Rejections - 35 USC § 112

The Examiner withdraw's the previous rejections of Claims 1-10 due to Applicant's clarification proposed in the August 19, 2002, amendment.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-5 are rejected under 35 U.S.C. 102(a) as being anticipated by 6,097,147 to Baldo et al.

In reference to Claims 1-5, Baldo et al. teaches:

Claims 1-5

- a electro-luminescent electron-hole photon layer containing 4,4'-N,N'-dicarbozole-biphenyl (CBP) and 2,3,7,8,12,13,17,18-octaethyl-21H,23H-porphine platinum (PtOEP), with phosphorescent and/or fluorescent dyes (See Figure 3 layer 513, column 5 lines 25-45 and column 6 lines 5-18)

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over 6,097,147 to Baldo et al in view of 6,224,966 to Sakai et al.

Baldo et al. teaches a electro-luminescent electron-hole photon layer containing 4,4'-N,N'-dicarbozole-biphenyl (CBP) and 2,3,7,8,12,13,17,18-octaethyl-21H,23H-porphine platinum (PtOEP), with phosphorescent and/or fluorescent dyes. (See Figure 3 layer 513, column 5 lines 25-45 and column 6 lines 5-18)

Baldo et al. fails to explicitly teach the light-emitting layer and the organic film formed by simultaneous vapor deposition. However, Examiner notes that simultaneous vapor deposition is a processing limitation and therefore carries no weight in a claim drawn to a device.

"Even though product -by[-] process claims are limited by and defined by the process, determination of patentability is based upon the product itself. The patentability of a product does not depend on its method of production. If the product in product-by-process claim is the same as or obvious from a product of the prior art, the

claim is unpatentable even though the prior product is made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985)(citations omitted).

A "product by process" claim is directed to the product per se, no matter how actually made, *In re Hirao and Sato et al.*, 190 USPQ 15 at 17 (CCPA 1976) (footnote 3). See also *In re Brown and Saffer*, 173 USPQ 685 (CCPA 1972); *In re Luck and Gainer*, 177 USPQ 523 (CCPA 1973); *In re Fessmann*, 180 USPQ 324 (CCPA 1974); and *In re Marosi et al.*, 218 USPQ 289 (CAFC 1983) final product per se which must be determined in a "product by, all of" claim, and not the patentability of the process, and that an old or obvious product, whether claimed in "product by process" claims or not. Note that Applicant has the burden of proof in such cases, as the above caselaw makes clear.

Response to Arguments

5. Applicant's arguments filed August 19, 2002, have been fully considered but they are not persuasive.

Claims 1-5

Applicant traverses the relevance of Baldo et al. upon the basis that it only teaches adding one dopant, (PtOEP), to CBP. The Examiner respectfully disagrees with Applicant's assertion because Baldo et al. teaches that the electroluminescent layer may be "... **compris[ing]** CBP doped with about 8% PtOEP ..." and that

phosphorescent and fluorescent dyes may be incorporated into the electroluminescent layer as well. See Baldo et al., column 5 lines 25-45 and column 6 lines 5-18. Therefore, Baldo et al. teaches that the CBP/PtOEP layer may contain more matter by virtue of the phrase "comprising" and the explicit declaration of addition of phosphorescent and fluorescent dyes into the electroluminescent layer.

Claims 6-10

As Applicant's stated arguments mirror those presented for Claims 1-5, the Examiner refers the Applicant to the above section. Furthermore, the Examiner notes that Sakai et al. need not teach the limitation as it is a process limitation and thus carries no patentable weight in a device claim.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Hogans whose telephone number is (703) 305-3361. The examiner can normally be reached on M-F (7:30-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Whitehead Jr. can be reached on (703) 308-4940. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7724 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1782.

dh Dts
November 6, 2002


CARL WHITEHEAD, JR.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800